

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7871 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 ; NO

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KOLI HARIBHAI BHIKHABHAI @ HARIYO DAKU

Versus

DISTRICT MAGISTRATE

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Appearance:

MR SATISH R PATEL for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 3rd September, 1998 made by the District Magistrate, Bhavnagar under the powers

conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

The order of detention is based on three offences punishable under Chapter XVI of IPC, registered against the petitioner and some four incidents referred to by the witnesses whose identity and other particulars have not been disclosed. It is alleged that petitioner is a 'dangerous person' within the meaning of Section 2 (c) of the Act and his activities are prejudicial to the maintenance of public order. The order of detention is required to be quashed on the ground of non-application of mind alone. It transpires that one of the offences registered against the petitioner is in respect of an incident which occurred on 17th September, 1997 and was registered with C-Division Police Station at Bhavnagar, as C.R No. 173 of 1997. The detaining authority has referred to the said offence and the said offence is shown to be pending for trial. However, Mr. Patel, the learned advocate appearing for the petitioner has produced a certified copy of the judgment delivered by the learned Chief Judicial Magistrate, Bhavnagar in Criminal Case No. 5658 of 1997. It is evident that the said Criminal Case No. 5658 of 1997 is in respect of offence registered as C.R No. 173 of 1997. Under the said judgment and order dated 1st August, 1998, the petitioner and other accused have been acquitted. It is, therefore, evident that the detaining authority has failed to take into consideration the factum of petitioner's acquittal in one of the offences registered against him. The subjective satisfaction recorded by the detaining authority, is therefore, vitiated. Consequently, the order of detention also is vitiated.

4. The petition is, therefore, allowed. The impugned order dated 3rd September, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner unless is required to be detained in some other case, be released forthwith.

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Prakash\*